

REMARKS/ARGUMENTS

Prior to this Amendment, claims 1-5, 7, 8, 12-14, 16-18, 22, 23, and 25 were pending in the application. No claim amendments are made with this Amendment, and the listing of claims is provided for the convenience of the Examiner only.

Claim Rejections Under 35 U.S.C. §112

The Office Action rejected claims 1-5 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. It was requested that all "after" clauses found in claim 1 were not disclosed in the originally filed disclosure. The claims are fully supported by the initial disclosure and are not amended to address this rejection at this time. The initial disclosure found in lines 17-30 of page 5 calls describes the specific order or "after" features of claim 1. Specifically, the method is described as including communicatively linking an installation station with a host device and receiving at the installation station computing environment information. The installation station "then transmits an installation tool" to the host device, and a software payload is "then transmitted from the installation tool to the host device." The order called for in claim 1 complies with the written description requirement.

Claim Rejections Under 35 U.S.C. §102

The Office Action rejected claims 1-4, 7, 8, 12, 18, and 23 under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 6,009,274 ("Fletcher"). The rejection of these claims is traversed based on the following remarks.

As discussed in col. 5, Fletcher teaches automatic software updating, e.g., loading new versions or software or files associated with such software on nodes (labeled "end systems" or ESs in Fletcher). To this end, Fletcher teaches in the Summary that "ASU agents" are placed on each of the ESs. Then on an intermittent basis an ASU server polls or requests version information from the ASU agents, which respond by providing their current version information for the

Serial No. 09/780,038
Reply to Office Action of March 9, 2006

corresponding ES. According to lines 41-45, the ASU agents request files (e.g., with “an update request generator”) to update the ES software, such as to a new version, and the software is then loaded or installed. At col. 9, lines 17-43, Fletcher describes an automated software updating process that includes the ASU server transmitting requested files with “an installer” that “replaces the older components with the newer versions.” This method of automatically updating software components on end systems over a network differs from each of the inventions described in the pending independent claims, and hence, Fletcher fails to support an anticipation rejection of any of the pending claims.

Claim 1 is directed to a method in which “the installation station accesses data storage storing differing ones of the systems management software and selects the software payload from the differing ones based on the received computing environment information.” The Office Action appears to assert that the ASU server is the “installation station” of claim 1. If this assumption is correct, then the ASU server fails to teach the method of claim 1 because it does not select a software payload for transmittal but, as discussed above, the ASU server responds to update requests for particular files from an ASU agent on an ES (i.e., it appears that ASU agent performs the software payload selection). For this reason alone, Fletcher does not support an anticipation rejection of claim 1.

Further, claim 1 calls for the installation tool to second operate “to automatically configure the installed software payload.” Such configuration is “based on the computing environment information” and yet further, this information includes “thresholds based on configuration of the host device”, with the installed payload being modified based on such thresholds. The Office Action cites Fletcher at col. 9, lines 17-29 for teaching all of this limitation. However, as discussed above, Fletcher at this citation describes an “installer” that “replaces the older components with the newer versions, unloads the Agent, and reloads and restarts

the Agent and its services.” There is no teaching of any of the “second operating of the installation tool” as called for in claim 1.

Specifically, Fletcher fails to teach “configuring” of the newer versions that are being installed. The Office Action states that configuration occurs “by the fact that certain versions and file/components must be added or replaced” but this argument does not ring true because the installer is not selecting the versions and is not determining which files and components must be added but is simply installing the versions/files that were received in the payload from the ASU server. Further, there is no discussion that the installer of Fletcher operates based on thresholds received previously from the ASU agent in host-specific computing environment information. For these additional reasons, Fletcher fails to teach or suggest the method of claim 1.

Yet further, the Office Action argues that the version information provided by the ASU agent to the ASU server teaches the “computing environment information” for a host device called for in claim 1. This very broad reading is not permissible because it reads out the claim language that calls for the information to comprise “thresholds based on configuration of the host device.” For this additional, reason claim 1 is not shown by the teaching of Fletcher. The Examiner is also requested to review Applicant’s specification for further information on the computing environment information at page 14, line 20 to page 15, line 14 (e.g., to construe the claim language with the specification in mind but, of course, reading limitations from the specification is not being requested or suggested).

Still further, claim 1 calls for the transmitting of the software payload to occur “after the loading of the installation tool.” In col. 9, Fletcher teaches that its installer is provided with the new version software. Hence, Fletcher fails to anticipate claim 1 for this additional reason.

Claims 2-4 depend from claim 1 and are believed allowable over Fletcher for at least the reasons provided for allowing claim 1. Claim 2 provides further

definition of "computing environment information," and these types of information are not passed by the ASU agents to the ASU server (and, further, the ASU server does not use such information in selecting the payloads as required in claim 2). The Office Action states that "versions" teaches this limitation, but, as discussed above with reference to claim 1, this is not true as versions of a particular software do not teach thresholds and specifically thresholds related to a computing configuration as called for in the claim. Further, Fletcher fails to teach the other types of information discussed in claim 2.

Yet further, in the Pre-Appeal Brief Request for Review, Applicant indicated that a reviewable issue was whether the teaching of "versions" was teaching of "thresholds" used in software payload configuration operations. The following argument is provided from the Request for Review for the convenience of the Examiner:

"As stated in Applicant's July 16, 2005 Amendment, independent claims 1 and 23 call for the computing environment information to include thresholds based on the configuration of the host device and the "automated configuring comprises modifying the installed software payload based on the thresholds" (for claim 1). Claim 23 further calls for the thresholds to be calculated by the survey tool installed in the host device. The final Office Action refers briefly to version information with reference to Holmes. However, Applicant asserts that version information does not teach the "thresholds" of claim 1 and hence, the Examiner has failed to state a *prima facie* rejection under 35 U.S.C. §103. The Response to Arguments in the final Office Action states that the Holmes' version information teaches thresholds as thresholds are merely numbers not to be exceeded. Applicant disagrees that a version number could be considered a threshold for use by systems management software, i.e., the payload being installed on the host device, as claimed.

This can be further understood when “version” is used in place of “threshold” in other portions of claims 1 and 23. For example, claim 1 calls for modifying the installed software payload “based on the thresholds” simply would not make sense if the threshold was a version number, i.e., you would select a version of a software payload for installation but not modify installed software to be a second version.

Claim 23 calls for the thresholds to be “calculated”, and there is no reason to calculate a version number with a survey tool as it can simply be read (but, a software version on a host device may be read and used in calculating or selecting a threshold for systems management software or at least in use in selecting an agent to download). ”

Independent claim 7 includes limitations that call for the installed software payload to be configured or modified based on collected environment information, and as discussed with reference to claim 1, Fletcher fails to teach that its installer acts in this manner. Additionally, claim 7 calls for “the transferring and installing of the payloads” to be “remotely managed...at the installation station.” The Office Action cites col. 5, lines 5-52 and its discussion of an “ASU manager,” but this component appears to be a user programmable component that determines when the ASU agents should be updated. It does not appear to function to remotely manage transferring of the new versions of software to the ESs or to manage the installation of such payloads. For this additional reason, claim 7 is believed allowable over Fletcher. Claims 8 and 12 depend from claim 7 and are believed allowable at least for the reasons for allowing claim 7.

Independent claim 18 is directed to a system that includes an installation tool that is “configured to modify the installed systems management software based on the environment information.” As discussed with reference to claim 1, Fletcher fails to teach such an installation tool with its installer. Further, claim 18 calls for the installation station to select the payload to match the environment information. As

discussed with reference to claim 1, Fletcher teaches that the ASU agent requests the newer versions and the ASU server does not select a payload (and particularly, not one to match environment information). Hence, the reasons provided for allowing claim 1 over Fletcher are believed applicable to claim 1.

Independent claim 23 is directed to a method that also calls for an installation tool that “second” operates to “automatically configure the installed software payload based on the computing environment information.” The reasons for allowing claim 1 are, therefore, applicable to claim 23. Further, the computing environment information includes thresholds calculated by a survey tool. As discussed relative to claim 1, Fletcher fails to teach configuring load software based on previously gathered thresholds. Further, the Office Action argues that version numbers are “calculated” but as discussed in the arguments provided in the Pre-Appeal Brief Request for Review this makes no sense. Version numbers are simply read and would not be calculated. Further, as discussed above, even if the version numbers are thresholds, how would one modify or configure loaded software based on its version (e.g., once you load Version 1.4 of “Patent Office Software” you do not need to modify or configure it based on 1.4 to achieve a useful form of Version 1.4)? Yet further, claim 23 calls states “the software payload is not presently running on the host device.” Fletcher is directed at updating existing or “presently running” software to a new version, and hence, it fails to teach this limitation of claim 23. For these reasons, Fletcher fails to teach or suggest the method of claim 23.

Claim Rejections Under 35 U.S.C. §103

The Office Action rejected claims 5, 14, 16, and 17 under 35 U.S.C. §103(a) as being unpatentable over Fletcher in view of Applicant’s uncontested Official Notice. The rejection of these claims is traversed based on the following remarks.

Claim 5 depends from claim 1 and is believed allowable over Fletcher for the reasons provided for allowing claim 1. Official Notice was not taken for overcoming

the deficiencies of Fletcher discussed with reference to claim 1.

Independent claim 14 is directed to a method that includes “performing modifications of the installed agent software based on the output file to enhance operation of the installed agent software.” The output file defines the computing environment of a computer device. Hence, claim 14 is believed allowable over Fletcher for the reasons provided for allowing claim 1 (and Official Notice was not taken for teaching such modification performing of installed software based on computing environment definitions). Further, Fletcher fails to teach that its installer acts to modify the installed software to enhance its operation. Instead, Fletcher’s installer simply acts to replace older versions with the newer versions provided in the same payload. For this additional reason, claim 14 is allowable over Fletcher.

Claims 16 and 17 depend from claim 14 and is allowable as depending from an allowable base claim, and additionally, claim 16 includes limitations similar to that of claim 2 and is believed allowable over Fletcher for the reasons provided for allowing claim 2.

In the Office Action, claim 13 was rejected based on Fletcher in view of “Microsoft Computer Dictionary.” Claim 13 depends from claim 7 and is believed allowable over Fletcher for the reasons provided above for allowing claim 7. The Microsoft Computer Dictionary is not cited for, and fails to, overcome the deficiencies of Fletcher discussed in reference to claim 7.

Yet still, the Office Action rejected claim 22 as being unpatentable over Fletcher in view of Goldband (USPN 6,434,532). Claim 22 depends from claim 18 and is believed allowable over Fletcher for the reasons provided above in reference to claim 18. Goldband fails to overcome the deficiencies of Fletcher. As discussed in prior Amendments, Goldband does not teach operating an installation agent to configure the software after installation based on the previously collected computing environment information for the client or host. Goldband does not teach that configuration includes modifying software after installation based upon

thresholds noted in the configuration of a host device. The combination of Fletcher and Goldband fail to teach or suggest each feature of claim 18, and thus, claim 22 that depends on claim 18 is also not shown or suggested.

Also, the Office Action rejected claim 25 as being unpatentable over Fletcher in view of Platt (USPN 5,421,009). As in claim 1, independent claim 25 includes the limitation of second operating an installation tool to automatically configure an installed software payload based on computing environment information. Hence, the reasons for allowing claims 1 over Fletcher are applicable to claim 25. Platt is cited for teaching "determining necessary commands from surveying a target system" and not for teaching configuring installed software, and Applicant did not find such teaching in Platt. Hence, Platt fails to overcome the deficiencies of Fletcher, and the rejection should be withdrawn.

Further, claim 25 calls for a survey tool to determine commands to run during installation of the software payload, which is clearly beyond the "version" information collected by the ASU agents of Fletcher. These commands are then run during installation by the installation tool. Platt's teaching at the cited col. 2, lines 12-18 is directed to booting an operating system and fails to teach commands to run during installation of a software payload, which is further defined in claim 25 to better distinguish such a payload from an operating system (although Platt is still cited even though it is directed to booting an OS).

The Response to Arguments of the June 16, 2005 Office Action asserts that "Platt ensure commands exist for installation and therefore, Platt necessarily discloses commands to run during installation." However, Platt merely states at col. 2, lines 16-18 that its method involves ensuring "that the remote computer system has all the standard operating system commands necessary to perform the installation." Platt teaches booting of an operating system with standard operating system commands and fails to show "operating the survey tool to gather environment information for the host device and to determine commands to run

Serial No. 09/780,038
Reply to Office Action of March 9, 2006

during installation of the software payload on the host device" at least because it does not teach collecting environment information and then determining commands but instead teaching simply looking for an existence of standard operating system commands for use in booting the OS (i.e., the commands are pre-determined and are simply verified as being present and do not depend upon gathered environment information). The March 9, 2006 Office Action provides no citation to Fletcher or to Platt for this additional limitation. For these additional reasons, claim 25 is believed allowable over the combination of Fletcher and Platt.

Conclusions

Based on the above remarks, Applicant requests that a timely Notice of Allowance be issued in this case.

No fee is believed due for this submittal. However, any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

Respectfully submitted,



Kent A. Lembke, No. 44,866
Hogan & Hartson LLP
One Tabor Center
1200 17th Street, Suite 1500
Denver, Colorado 80202
(720) 406-5378 Tel
(303) 899-7333 Fax

May 31, 2006